IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 833 OF 2005

IN

CHAMBER SUMMONS NO. 1211 OF 2003

IN

SUIT NO. 4411 OF 1997

J.K. SYNTHETICS LIMITED A Company within the meaning of Companies Act, 1956 and having its Registered Office at Kamla Tower Kanpur- 208 001 (U.P.)	]	Appellant (Original deft. no.1)

Versus

1) State of Maharashtra through the Principal Secretary and RLA to Government, having his office at Mantralaya, Mumbai - 400 032	]	Original Appellant in Appeal 477/04
2) The Industrial Credit and Investment Corporation of India Ltd., a Public Limited Company incorporated under the Indian Companies Act, 1913 (Act VII of 1913) having its registered office at 163, Backbay Reclamation, Mumbai - 400 020	]	
3) The Industrial Finance Corporation of India Limited, a Public Limited Company within the meaning of Companies Act, 1956 and having its Registered Office at 16, Sansad Marg, Bank of Baroda Building, New Delhi - 110 001 and its Registered Office at Earnest House Nariman Point, Mumbai - 400 021	]	
4) Industrial Development Bank of India, a Statutory Corporation established under the Industrial Development Bank of India Act, 1964, having its Head Office at IDBI Tower, Cuffe Parade, Mumbai - 400 021	]	
5) Life Insurance Corporation of India, a statutory Corporation established under the Life Insurance Corporation of India	]	

Limited Act, 1956 having its Central Office at Yogakshema, Jivan Bima Marg, Mumbai - 400 021]

6) Unit Trust of India, constituted under the provisions of the Unit Trust of India Act, 1963 having its Registered Office at Sir Vithaldas Thackersey Marg, New Marine Line, Mumbai - 400 020]

7) General Insurance Corporation of India constituted under the General Insurance business (Nationalisation) Act, 1972 (57 of 1972) having its Registered Office at Industrial Assurance Building, Churchgate, Mumbai- 20]

8) Industrial Investment Bank of India a Public Limited Company within the meaning of Companies Act, 1956 and having its Registered Office at 19, Netaji Subhash Road, Calcutta- 700 001 and its Mumbai Office at Earnest House, Nariman Point, Mumbai - 400 023.]

9) National Insurance Company Ltd. a Subsidiary of General Insurance Corporation of India and having its Head Office at Middleton Road Calcutta - 700 071 and its Mumbai Office at 12, Jamshedji Tata Road Churchgate, Mumbai - 400 020.]

10) New India Assurance Company Ltd. a subsidiary of General Insurance Corporation of India having its Head Office at New Indian Asurance Bldg., M.G. Road, Fort Mumbai - 400 023.]

11) Oriental Insurance Company Ltd. (formerly known as Fire & General Insurance Company Ltd.) a subsidiary of General Insurance Corporation of India, having its Head Office at Jivan & Udyog Bldg., A-25/27, Asaf Ali Road, New Delhi 110 001 and its Mumbai Office at 7, J. Tata Road, Churchagate, Mumbai - 400 020.]

12) United India Insurance Company Ltd., a Subsidiary of General Insurance Corporation of India,]

having its head Office at 24, White Road, Madras - 600 014 and its Registered Office at 1, Stadium House, Veer Nariman Road, Mumbai - 400 020]

13) Rajasthan State Industrial Investment Corporation, having its office at Udyog Bhavan, Tilak Marg, Jaipur- 302 005]

14) State Bank of India, a body Corporate under the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970 and having its Office at Motimahal Marg, Admn. Bldg., Hoyarat Ganj, P.B. no. 57, Lucknow- 276 001 and Domestic Treasury Department, Central Office, PB no. 12, Mumbai - 400 021]

15) Bank of Tokyo a banking Company incorporated under the laws of Japan and having a Branch Office at Jeevan Prakash, Sir PM Road, Mumbai - 400 023]

16) Syndicate Bank, a body Corporate the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 and having its Zonal Office at Sarojini House, Bhagwandas Road, New Delhi and its Zonal Office at E-Maker Tower, Mumbai - 400 005]

17) Bank of Rajasthan, having its Office at Central Admn. & Indl. Banking Department Central Office C-3, S.P. Marg, "C" Scheme, Jaipr.]

18) Central Bank of India, a body corporate under the Banking Companies (Acquisition & Transfer of Undertaking), Act, 1970 and having its office at Chandramukhi Nariman Point, Mumbai - 400 021.]

19) ANZ Grindlays Bank PLC, having its Office at Mercantile House, 1st Floor, 15, Kasturba Gandhi Marg, New Delhi and having its Branch Office at M.G. Road, Fort, Mumbai - 400 023.]

20) The Industrial Credit & Investment Corporation of India Limited, a Public Ltd. Company incorporated under the Indian Companies Act, 1913 (Act VII of 1913) in its capacity as trustees for "B" Series, "C" Series and partly Convertible Debenture Series and having its Registered Office at 163,Backbay Reclamation, Mumbai - 400 020	]	
21) Punjab National Bank, a body corporate under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and having its office at Kalpi Road, Kanpur and its Delhi Office at P.N.B. House, Bhikaji Cama Place, New Delhi- 101 029	]	
22) State Bank of Bikaner and Jaipur under the State Bank of India (subsidiaries) Act, 1959 having its Branch Office at Kaushal Puri Gumti Number 5, Kanpur- 208 012	]	
23) Bank of Baroda a Body Corporate constituted under the Banker's Companies (Acqusition & Transfer of Undertakings) Act, 1920, having its Central Office at 3, Walchand Hirachand marg, Ballard Estate, Mumbai - 400 038 and Branch Office at 118/330 Kaushal Puri, Gumti Numbers, 5 Kanpur.	]	
24) Hongkong & Sanghai Banking Corporation Limited having its Office at Mahatma Gandhi Road, Fort, Mumbai - 400 020	]	Respondents (Original Defendant)
AND		
COURT RECEIVER, HIGH COURT, BOMBAY	]	Respondent

Mr. Virag Tulzapurkar, Senior Advocate with Ms. Soumya Srikrishna i/b Malvi Ranchoddas & Company for Appellant.

Mr. Niranjan Pandit, A.G.P. for Respondent No. 1.

Mr. B.D. Joshi for the Court Receiver, High Court, Bombay.

CORAM	:	KSHITIJ R. VYAS, C.J. & ABHAY S. OKA, J.
DATE ON WHICH JUDGMENT IS RESERVED.	:	29TH JUNE, 2006
DATE ON WHICH JUDGMENT IS PRONOUNCED	:	17TH JULY, 2006

JUDGMENT (PER ABHAY S. OKA, J.)

1. By this Appeal, the Appellant first Defendant has taken an exception to the judgment and order dated 13th December, 2004 passed in Chamber Summons No. 1211 of 2003 in Suit No. 4411 of 1997. The issue involved in this Appeal is regarding entitlement of the Appellant to reduction in the amount of fees/ commission charged by the Court Receiver as per the rates prescribed by Rule 591 of The Rules and Forms of the High Court of Judicature at Bombay on the Original Side in its several Jurisdiction Rules, 1980 (hereinafter referred to as "O.S. Rules").

2. For the purposes of appreciating the submissions made by the learned counsel appearing for the parties, it will be necessary to refer to the facts of the case in brief.

3. The second Respondent filed a suit against the Appellant for recovery of a sum of Rs.101.29 Crores and other reliefs which are more particularly set out in

the plaint. By order dated 7th January, 1998, the Court Receiver, High Court was appointed as Receiver of the properties of the Appellant described in Exhibit "A-1" to "A-5" to the plaint. Court Receiver was also appointed in respect of the properties at Exhibit "B-1" to "B-7" and Exhibit "C" to the plaint. This Court directed that the Appellant shall be appointed as the Agent of the Court Receiver of all the suit properties without insisting upon any security. On the basis of the said order, the Appellant opted to act as an Agent of the Court Receiver only in respect of two running Units of Cement Plants of the Appellant situate at Gotan and Nimbahera in the State of Rajasthan. In respect of rest of the properties, the Appellant did not accept the agency. The Court Receiver after hearing the plaintiffs and the appellants fixed the Adhoc Royalty @ Rs.25.00 Lacs per month for each of the aforesaid Unit w.e.f. 7th January, 1998. A Chamber Summons was taken out by the Appellant for reduction of the adhoc Royalty fixed by the Court Receiver. The said Chamber Summons was dismissed by this Court. Initially there was some default on the part of the Appellant in payment of monthly royalty. Later on the Appellant started regularly paying monthly royalty amount of Rs.50.00 Lacs. It appears that the suit filed by the second Respondent was transferred to the Debt Recovery Tribunal, Mumbai. The parties moved the said Tribunal for appointment of the DRT Receiver in place of Court Receiver. By order dated 20th December,

2002 passed by the DRT, Mumbai, the Court Receiver, High Court was discharged and a DRT Receiver was appointed. Till the end of December, 2002, the Appellant had deposited the total sum of Rs.29,73,99,998/- with the Court Receiver by way of Royalty. The Court Receiver made payment of Rs.2,79,84,771/- to the plaintiff towards reimbursement of security charges and Insurance premium. The royalty amount received from the Appellant was deposited in fixed deposits by the Court Receiver under different deposits of Rs.10.00 Lacs. each. The royalty amount was invested by the Court Receiver under 272 different fixed deposit receipts. In terms of the Rule 591 of the O.S. Rules, the Court Receiver charged commission at the rate of 6% on the royalty amount collected from the Appellant. The total commission at the rate of 6% works out to be Rs.1,78,44,000/- which has been already credited by the Court Receiver to the Government account. As per the said Rule 591, the Court Receiver charged commission at the rate of 5% on the interest received on the fixed deposits. The said commission of Rs.9,94,739/- has been already credited by the Court Receiver in the Government account.

4. The Appellant took out Chamber Summons No. 1211 of 2003. Prayer (a) of the said Chamber Summons is as under :

"(a) That this Hon’ble Court be pleased to

waive the fees chargable under Rule 591 of the Bombay High Court (Original Side) Rules, 1980 by the Respondent at the rate of 6% on the amounts of royalties recovered by the Respondent from Defendant No. 1 and at the rate of 5% on the interest earned on the investment of funds in the custody of the Respondent and in particular on the amounts of royalties recovered by the Respondent from Defendant No.1".

5. The said Chamber summons was initially decided by the learned Single Judge by an order dated 4th Feburary, 2004. By the said order, the learned single Judge reduced the commission of the Court Receiver on royalty and commission on interest on fixed deposits. A lumpsum amount of Rs.10.00 Lacs was fixed. The State Government carried the said order in an Appeal before a Division Bench of this Court. By the Judgment and order dated 1st September, 2004, the appeal was allowed and the learned single Judge was directed to decide the Chamber Summons afresh. By the order impugned in this appeal, the Chamber Summons has been decided afresh and the same has been dismissed.

6. Shri. Tulzapurkar, the learned senior Counsel appearing on behalf of the Appellant submitted that the Court has a power to fix the fee payable to the Court Receiver. He submitted that the rates of commission

payable on royalty and interest fixed by Rule 591 of the O.S. Rules are subject to variation by the Court. Placing reliance on a decision of a learned Single Judge of Karnataka High Court in the case of N. Jayadevappa v/s G. Nanjundappa (AIR 1976 Karnataka page 27) he submitted that remuneration of the Court Receiver has to be commensurate with the work actually done by him. Relying upon a decision of a Division Bench of Madras High Court in the case of B. Soundarapandian and another v/s IFCI (AIR 1982 Madras P. 206), he urged that the remuneration of the Receiver has to be fixed by giving due consideration to the quantum of work done by the Receiver and the other circumstances of the case. He pointed out that the Madras High Court has also framed a rule which is similar to rule 591 of the O.S. Rules. He stated that the only work done by the Court Receiver in this case is of investment of the royalty amount paid by the Appellant in various banks. He urged that total commission of Rs.1,85,22,958/- charged by the Receiver is exhorbitant and is not at all commensurate with the work done by the Court Receiver. He submitted that the learned single Judge has declined to exercise the power vested in him only on the ground that if the case of the Appellant is entertained, in large number of cases the same exercise will have to be done. He urged that the order passed by the learned Single Judge is illegal. He submitted that this was a fit case for exercise of power under Rule 591.

7. Shri. N.P. Pandit, the learned AGP appearing for the State submitted that a departure can be made from Rule 591 only in exceptional cases. He submitted that wherever the Rule makers intended that the remuneration has to be fixed considering the quantum of work, a specific provision to that effect has been made in Rule 591 and 592. He submitted that the decisions of Madras and Karnataka High Courts have no application to the facts of this case.

8. Shri. B.D. Joshi, the learned Counsel appearing for the Court Receiver pointed out from the Reports submitted by the Court Receiver that huge funds are required for running the establishment of the Office of the Court Receiver. He stated that every year a large amount by way of revenue has been transferred by the office of the Court Receiver to the State Government. He submitted that the learned Single Judge has laid down correct principles.

9. We have given our anxious consideration to the submissions made by the learned Counsel appearing for the parties. Rule 591 and 592 of the O.S. rules read as under :

> "591. Unless otherwise ordered by the Judge, the Court Receiver shall charge fees according to the following scale :-

Scale of fees	Per cent
(1) On Rents, Royalties or licence fees recovered	6
(2) On outstanding recovered except as provided in item 3 below	
On the first Rs.25,000 or fraction thereof	5
On the next Rs.25,000 or fraction thereof	3
On the next Rs.50,000 or fraction thereof	2
On any further sum over Rs.1,00,000 ..	1
(3) On outstanding recovered from a Bank or from a public servant without filing a suit	1
(4) On sale of properties movable or immovable calculated on the total value realised in any one estate :	
On the first Rs.25,000 or fraction thereof	3
On the next 25,000 or fraction thereof	2 1/2
On the next Rs.50,000 or fraction thereof	2
On any sum above Rs.1,00,000	1
(5) For taking charge of movable property which is not sold on the estimated value	1
(6) For taking custody of moneys	1
(7) For taking custody of Government Securities or Stocks, Shares, Debentures, Debenture-Stock or other Securities which are not sold on the estimated value	1
(8) On the interest earned by investment of funds in the custody of the Court Receiver.	5
(9) For any special work, not provided	

for above, such remuneration as the Court on the application of the Receiver shall think reasonable ..

. While calculating fees to be charged, the amount will be calculated to the nearer whole rupee by giving up the amount less than 0.50 ps. and counting the amount of 0.50 ps. and above a whole rupee.

592. The Court Receiver shall, unless otherwise ordered by the Judge, charge to suits, estates or matters under his management a sum which in his discretion he considers proper, towards the expenses of his office including his salary and this he shall do so with due regard to the fees charged by him under rule 591 and to the value of each suit, estate or matter and the labour and trouble involved in its management."

10. Rule 591 lays down the scale of fee and/or commission to be charged by the Receiver. Items 1 to 8 provide for a specific percentage to be charged by way of fees by the Receiver. Item No.1 provides for fees of 6% on rents, royalties or licence fees recovered by the Receiver. Item 8 provides for 5% of fee which is payable on interest earned on the funds invested by the Court Receiver. Fee prescribed in items 1 to 8 has no co-relation with the efforts put in by Office of the Receiver. However, item 9 gives complete discretion to the Court to fix remuneration of the Receiver for any special work which is not provided for in items 1 to 8. Rule 591 makes it very clear that normally the charges of the Receiver will be as per the scale prescribed by the rule unless the Court otherwise directs. Rule 592 provides that the Receiver has a discretion to charge to the suits a sum which he in his discretion considers

proper towards the expenses of his office. While charging the said amount, the Receiver has to give due regard to the fee charged by him under Rule 591 and the labour and trouble involved in the management. Thus the sum which can be charged under Rule 592 is in addition to the fee payable under Rule 591. It is pertinent to note that while framing the Rules a fixed percentage is prescribed so far as work covered by items 1 to 8 of Rule 591 is concerned. However for the work covered by item 9 of Rule 591 and the Rule 592, the fee will have to be fixed commensurate with the actual work done.

11. It will be necesary to refer to the rules framed by this Court in the year 1922. Rule 411 of the said rule reads thus :

> 411. The rate of the remuneration of a receiver shall in no case exceed the amount specified in the scale of fees given below :
>
> (a) No Officer of the Court acting as receiver shall settle his remuneration with the attorneys for the parties concerned or with the parties if in person.
>
> (b) No remuneration, except on the scale laid down, shall be allowed by the Commissioner for taking accounts in passing a receiver’s

accounts.

Scale of Fees

(1) On rents recovered .. .. .. 5 per cent.

(2) On outstanding recovered :

. On the first Rs.10,000 or fraction thereof 5 per cent

. On the next " 15,000 " " 3 per cent

. On the next " 25,000 " " 2 per cent

. On the next " 50,000 " " 1 per cent

. On any further sums over Rs.1,00,000 1/2 per cent

(3) On sales of properties, moveable or immovable, calculated on the total value realised in any one estate -

. On the first Rs.10,000 or fraction thereof 3 per cent

. On the next " 15,000 " " 2 1/2 per cent

. On the next " 25,000 " " 2 per cent

. On the next " 50,000 " " 1 per cent

. On any sums above Rs.1,00,000 ... 1/2 per cent

(4) For taking charge of moveable property which is not sold on the estimated value ... 1 per cent.

(5) For special attendance out of office in cases not provided for above -

For the first half hour .. .. .. Rs. 15-0-0
Over half an hour and under an hour " 30-0-0

For every hour or fraction of an hour over one hour .. .. .. " 15-0-0

(6) For any special work, not provided for above, such remuneration as the Court on the application of the receiver shall think reasonable.

12. In the rules which are published in the year 1930, Rule 434 deals with the rate of remuneration of the Receiver. Rule 434 is more or less identical to Rule 411 of the rules of the year 1922. The rules published in the year 1936 contain identical rule which is the rule 444.

13. There is a clear distinction between present rule 591 and the earlier rules, namely, rule nos. 411, 434 and 444. Items 1 to 8 of Rule 591 provide that normally the fee of the Receiver will be as per the scale prescribed in the rule unless otherwise directed by the Court. Whereas the old rules of 1923 and 1930 provided that the scale which is mentioned in the rule 411 of 1923 Rules and Rule 434 of 1930 Rules is the upper limit of the rate of remuneration of a Receiver. The said rules do not provide that the remuneration shall be as per the scale of fees provided in the rules. Rule 441 which finds place in 1936 rules provided that without an express order of the court, the rate of remuneration of a Receiver shall in no case exceed the amounts specified in the scale of fees mentioned in the rule. The said opening part of rule 441 was amended on 15th July, 1948 and the opening words of rule 441 were substituted as under :

> "Unless otherwise ordered by the Judge, the Court Receiver shall charge fees according to the following scales"

Another set of rules came into existence which was published in the year 1957. Rule 476 in the said rules is a re-production of rule 441 in the earlier rules as amended in the year 1948. The present rule 591 was incorporated in the rules which were published in the year 1980. Thus upto 1948 the position was that the Receiver could fix fees subject to upper limit provided by the scale prescribed by the rules. From 1948 the position is that the Receiver has to charge the fee as per the scale prescribed by the concerned rule unless a contrary order is passed by the Court. Thus the Receiver is bound to claim fees as per scale prescribed by the rule 591 unless there is a contrary order of the Court. Now the question to be decided is under what circumstances the Court should exercise the power of directing the Receiver to charge fee which is not in conformity with the scale prescribed by the rule 591.

14. On plain reading of rule 591, it is apparent that the intention is that in normal circumstances the Receiver must charge fees as per the scales prescribed in rule 591. Only by way of an exception, the Court will exercise power of permitting Receiver to charge fee which may not be consistent with the scale prescribed by rule 591. Only by way of an exception

that the fee payable as per the scale prescribed in items 1 to 8 of the Rule 591 of the O.S. Rules can be reduced. The learned Single Judge, in our view, has rightly held that the fee shall be charged in accordance with the scale prescribed by the rule 591 and reduction of fee by exercising discretion vested in the Court cannot become a normal feature. He has rightly held that reduction of fees can be only by way of exception. The learned Single Judge by way of illustration has stated that the discretion of reducing the fee or commission payable under Rule 591 can be exercised where the party liable to pay fee belongs to a weaker strata of the society or the party is a widow or a minor. Thus it is very clear to us that departure can be made from the scale prescribed by rule 591 only by way of an exception. The Court has to exercise discretion of reducing fee prescribed by rule 591 only in exceptional cases considering the peculiar facts of the case. The reduction of fee cannot become a normal feature.

15. It is obvious from the language of rule 591 that the rule makers did not intend that while taking fee or commission on the royalty or rent collected and on interest earned on the amounts invested by the Receiver, the amount of fee or commission shall be commensurate with the efforts put in by the Court Receiver. If that was the intention, the framers of the rules could not have provided for payment of fee on

percentage of the royalty received and interest earned on fixed deposit. That is the reason why the earlier rule which provided for upper limit of scale of fees had been replaced by the present Rule 591.

16. It will be necessary to refer to various reports submitted by the Court Receiver in this Appeal in compliance with the direction given by this Court. In the said reports, the Receiver has set out the expenditure incurred for running his Office, the quantum of fee/remuneration charged by the Receiver in various cases and the revenue remitted to the State Governemt. The Office of the Court Receiver has a staff of 100 officials. A Chart incorporated in the report showing the revenue remitted to the Government and the expenditure incurred by the office of the Court Receiver is as under.

Year	Revenues remitted to Govt.	Expenditure of this Office on salary	Exp.in Printing & Statio-nery	Exp.in Postage & Revenue St.
2001	2,95,00,000	1,09,27,858	2,60,020.50	1,12,710
2002	1,64,51,170	1,03,11,134	1,27,157.50	1,25,207
2003	1,65,80,000	1,12,73,203	2,12,422.00	40,136
2004	1,50,00,000	1,27,94,735	2,32,688.00	1,55,145
2005	1,70,00,000	1,47,07,748	1,43,714.00	1,75,225

17. The Court Receiver has to look after various

properties in respect of which he is appointed as a Receiver by this Court. The properties are not confined to city of Mumbai and the properties are at different places in the state and even outside the State. The Receiver has to look after investments made in different proceedings in different banks. The Receiver's office has to keep track of all the investments made in different banks. Thus a large revenue is needed to maintain the Receiver's Office consisting of 100 officials.

18. Thus in our view departure can be made from the fixed percentage of fees prescribed in Rule 591 only in exceptional cases. For considering the question whether a particular case is an exceptional case, various factors will have to be considered by the Court in each case. It is very difficult to give exhaustive list of such factors. However, the discretion will have to be exercised having regard to the nature of the litigation, the financial capacity of the litigant, the social status of the litigant. In case of a person who belongs to weaker strata of society or a widow or a minor, the question of exercising the discretion can be considered.

19. Now the question before us is whether discretion should be exercised in favour of the appellant which is a Public Limited Company. Certain factual aspects will have to be considered. The

appellant was appointed as an Agent of the Court Receiver in respect of several properties. The Appellant has chosen to accept agency in respect of only two properties on which there is a Cement Plant. Ad-hoc royalty of Rs.25.00 Lacs. per unit per month was fixed when the agency was taken by the appellant. The Appellant applied to this Court for reduction of the adhoc royalty amount fixed by the Receiver by taking out Chamber Summons No. 1037 of 1998. The said Chamber Summons was dismissed by this Court. Thereafter the Appellant continued to pay royalty of Rs.50.00 Lacs per month. The Appellant is a Limited Company and is not an ordinary litigant. Rule 591 very much existed when the Appellant accepted the agency. Therefore, the Appellant accepted the agency with the full knowledge of the fixed scale of commission incorporated in Rule 591 on the royalty and interest amount. The Appellant was all along aware that the amount of royalty was being invested by the Court Receiver in fixed deposits from time to time. As stated earlier in December, 2002, the Court Receiver, High Court was discharged and DRT appointed its own Receiver. However, the Chamber Summons for reduction of fees was taken out on 2nd September, 2003. If the Appellant was desirous of obtaining of reduction in the fees, the Appellant should have moved the Court long back. The Appellant is a litigant capable of paying royalty of Rs.50.00 Lacs per month for a long span of time.

20. The decision of Karnataka High Court in the case of N. Jayadevappa will not be of any help to the Appellant. The Karnataka High Court was not dealing with a Rule like Rule 591 of the O.S. Rules. The High Court was dealing with the issue of fixation of fees of an Advocate who was appointed as a Receiver. In the decision of the Madras High Court relied upon by the Appellant, the Division Bench held that in a case where remuneration of the Receiver is not fixed at the time of his appointment, a power is vested in the Court to fix the remuneration either on a percentage of collections or at a fixed monthly remuneration. The Court further held that in such a case the Court would be guided by the quantum of work and the other circumstances. This decision is of no help to the Appellant. In this case, we are concerned with the exercise of power of the Court of reducing the fixed fee prescribed by Rule 591 of the Rules. The O.S. Rules have been framed in exercise of power conferred by Section 129 of the Code of Civil Procedure, 1908. The Rules framed under Section 129 can be inconsistent with the Rules under the First Schedule of said Code. However the said Rules cannot be inconsistent with Letters Patent.

21. As stated earlier, the order passed on the Chamber Summons earlier was set aside by the Division Bench of this Court and the Chamber Summons was

remitted to the learned Single Judge for a fresh consideration. After the remand, no further material was placed on record by the Appellant. The Appellant accepted the agency of the two properties having Cement Plants and willingly paid royalty of Rs.50.00 Lacs per month. The royalty amount was invested by the Court Receiver from time to time under separate fixed deposit receipts in the sum of Rs.10.00 Lacs each. More than 200 of such fixed deposits were made from time to time by the Court Receiver. As per scale prescribed by Rule 591, a small percentage of royalty collected and interest earned for all these years by the Court Receiver is required to be paid by way of fee to the Court Receiver. Considering all the aforsaid factors, the discretion cannot be exercised of reducing the fee payable by the Appellant as per the scale prescribed by Rule 591. The view taken by the learned Single Judge is correct. The quantum of work done by the Court Receiver cannot be the only consideration for reduction or waiver of the fee claimed as per scale prescribed by Rule 591.

22. In the circumstances, we find that the view taken by the learned Single Judge is legal and proper and no interference is required. We accordingly dismiss the appeal with no order as to costs.

(KSHITIJ R. VYAS, CHIEF JUSTICE)

(ABHAY S. OKA, J.)